vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1632 OF 2005

Shipping Corporation of India
Ltd., Shipping House, 245,
Madam Cama Road, Nariman
Point, Bombay - 400 021 ... Appellants

V/s.

Shri I.K. Bhagwagar
19, Shri Kripa Society, Rander
Surat - 395 009 ... Respondent

Mr.S.K. Talsania a/w. Mr.S.V. Uttam i/b M/s.Mulla & Mulla for Appellants
Mr.J.B. Patel for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 1, 2005**

ORAL JUDGMENT:

. The Appeal has been filed against the judgment and order of the Commissioner for Workmen's Compensation in Application (WCA) No.30/C-6 of 1988. By this order, the Commissioner has awarded Rs.99,280/- towards compensation and Rs.5,000/- by way of penalty to the respondent-workman. Further, interest @ 6% per annum was awarded from the date of the application till payment.

2. The undisputed facts are that the respondent was

in service of the appellants as a Fitter in the year 1967. He was posted on the Vessel mv.Rajendra Prasad in 1985. The Respondent while working as a Fitter felt giddy and was admitted to a hospital at Jamnagar where he was under treatment for 10 to 12 days. The respondent was declared unfit for sea service by the medical officer of the Corporation. On such a certificate being issued the respondent's services were terminated and he was paid a sum of Rs.14250/- as redundancy benefit.

3. An application was filed by the respondent under Workmen's Compensation Act claiming compensation by contending that he had suffered Ischaemic heart disease and myocardial infarction during the course of his employment with the Appellants.

4. The appellants resisted this claim of the respondent by contending that the disease suffered by the respondent was not on account of his work. Such a disease was not a disease or injury arising out of and in the course of employment.

5. Evidence was led by the respondent where he deposed that he was made to work for 12 to 15 hours a day as a Fitter on the Vessel. At times in an

emergency, he was required to work 36 to 40 hours continuously. The nature of work of the respondent was such that he was expected to work on the ship not only when it is sailing on high seas but when it is anchored as well. He has further testified that he was required to use a hammer of 25 kgs. for releasing the nuts used on the vessel's machines. When he was removing an exhaust fan weighing about 2 to 3 tonnes in August 1995, he felt giddy and was admitted to a hospital at Jamnagar for 10 to 12 days. When he returned to Mumbai, the Medical Officer of the Appellants examined him and found that he was unfit for sea service on account of Ischaemic heart disease.

6. The appellants examined the Chief Medical Officer who has stated in his examination-in-chief that there is a connection between Ischaemic heart disease and myocardial infarction, with sea service. In his cross-examination, he has stated that although a seaman is expected to work at sea for six months continuously his duty is not more than 14 hours a day. He has stated that the disease is aggravated by the hazardous work. He has also testified in his cross-examination that the disease suffered by the respondent had a causal connection with sea service. He has denied the suggestion put to him by the respondent that there was

no causal connection between the disease and the sea service. The appellants also examined the Assistant Medical Officer Dr.Shetty. This deposition of Dr.Shetty has been discarded by the Commissioner since he had not examined the respondent at all.

7. On a consideration of the evidence and pleadings, the Commissioner has awarded compensation to the respondent alongwith penalty and interest. The Commissioner has found that the Ischaemic heart disease suffered by the respondent was on account of the nature of his duty. The Commissioner has held that Petitioner had suffered a disease or injury arising out of and in the course of employment.

8. Mr.Talsania, learned Counsel appearing on behalf of the Appellants, submits that there was no evidence on record to show that the heart disease which the respondent suffered from had causal connection with the work that he performed. It is also submitted that unless it is proved by the respondent that there is some nexus between the disease and the nature of work that he was performing, no compensation could be awarded. Reliance is placed on the judgment in the case of *Mackinnon Mackenzie & co. Pvt. Ltd. v/s. Ibrahim Mahommad Issak,* **AIR 1970 SC 1906** and the *Regional*

Director, ESI Corporation & Anr. v/s. Francis De Costa & Anr., **JT 1996 (8) SC 118.**

9. A perusal of the evidence indicates that the workman was required to work for long and arduous hours. He was working as a Fitter and while doing so, he was expected to lift heavy weights. The hammer which he used for releasing nuts from the machine weighed 25 kg. At times, the exhaust fans weighing 2 to 3 tonnes in the boiler were required to be fitted or removed. All these factors, in my view, would lead to the conclusion that the heart disease had some connection with the nature of work which he performed. The Chief Medical Officer, who was examined, in terms has stated on oath that there is a causal connection between the disease suffered by the respondent and sea services. He has also deposed that the disease was aggravated by the hazardous nature of work. This deposition of the Chief Medical Officer has to be borne in mind while assessing the evidence. The Commissioner however, has committed an error in discarding the evidence of Dr.Shetty. However, I have perused the same. Dr.Shetty, who is the Assistant Medical Officer, assisting Dr.Modi has deposed that there is no causal connection between sea service and Ischaemic heart disease. However, he has admitted that the respondent was not suffering from the disease when

he was appointed in service as only persons who are medically fit are appointed to sea service. However, this Doctor has not treated the respondent at any point of time.

10. In my view, therefore, the respondent has made out a case for claiming compensation. The judgment of the Commissioner cannot be faulted. In *Mackinnon Mackenzie & co. Pvt. Ltd.* (supra), the Supreme Court has observed thus:

> 6. .... On the one hand the Commissioner must not surmise, conjecture or guess; on the other hand, he may draw an inference from the proved facts so long as it is a legitimate inference. It is of course impossible to lay down any rule as to the degree of proof which is sufficient to justify an inference being drawn, but the evidence must be such as would induce a reasonable man to draw it. .....

11. The Commissioner has in this case drawn a legitimate inference that the injury caused i.e., the heart disease has arisen during the course of and out of employment.

12. In the case of *Regional Director, ESI Corporation & Anr.* (supra), the Apex Court has held that causal connection between the death or accident and employment must be established by the workman before

being awarded compensation. In my view, the respondent in this case has successfully established the causal connection between the Ischaemic heart disease and the nature of work done by him during the course of employment. In fact, Dr.Modi, the Chief Medical Officer of the Appellants has supported the case of the Respondent. In this view of the matter, I do not find it necessary to interfere with the impugned order. Appeal dismissed.